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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,982	12/22/2003	Joshua M. Kopelman	P23,305-C USA	9053
23307	7590	08/11/2006	EXAMINER	
SYNNESTVEDT & LECHNER, LLP 2600 ARAMARK TOWER 1101 MARKET STREET PHILADELPHIA, PA 191072950			O'CONNOR, GERALD J	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/743,982

Applicant(s)

Kopelman et al.

Examiner

O'Connor

Art Unit

3627

– The MAILING DATE of this communication appears n the c ver sheet with the c rrespondence address –
Period for R ply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 30, 2006 (Amdt).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 17-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on December 22, 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Preliminary Remarks

1. This Office action responds to the amendment and arguments filed by applicant on May 30, 2006 in reply to the previous Office action on the merits, mailed February 28, 2006.
2. The amendment of claims 1 and 3 by applicant in the reply filed May 30, 2006 is hereby acknowledged.
3. The addition of claims 17-22 by applicant in the reply filed May 30, 2006 is hereby acknowledged.

Election/Restriction

4. Claims 15 and 16 continue to stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed December 6, 2005.

Claim Rejections - 35 USC § 101

5. The following is a quotation of 35 U.S.C. 101:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-14 and 17-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-14 and 17-22 are drawn merely to the production and/or manipulation of non-functional descriptive material, effecting no “useful, concrete, and tangible result.” It has been held that such claims, even if the non-functional descriptive material is claimed in combination with a computer-readable medium, are considered to comprise non-statutory subject matter, for merely manipulating an abstract idea. *In re Lowry*, 32 USPQ2d 1031 (Fed. Cir. 1994).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national

application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

8. Claims 1-14 and 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Nahan et al. (US 5,664,111).

Nahan et al. discloses a computer-implemented method for pricing goods of independent sellers using a marketer controller capable of communicating via a communications network, the marketer controller including a CPU and a memory operatively connected to the CPU, the method comprising the marketer controller: receiving from an independent seller, via the communications network, data identifying the independent seller's good; presenting to the independent seller a menu including plurality of selectable options, each of the options corresponding to a respective predetermined method for deriving a sale price for the independent seller's good; deriving the sale price at which a buyer may purchase the independent seller's good using the predetermined method corresponding to a seller-selected option; and, displaying the derived sale price to the buyer to present the good for sale at the sale price.

Regarding claim 2, in the computer-implemented method of Nahan et al. the sale price is determined proximate a time of sale of the good to the buyer.

Regarding claims 3, 7, 11, 13, and 21, in the computer-implemented method of Nahan et al. the predetermined method comprises discounting a manufacturer's suggested retail price.

Regarding claims 4 and 8, in the computer-implemented method of Nahan et al. the marketer controller stores a database of suggested retail prices.

Regarding claims 5, 9, 12, and 14, in the computer-implemented method of Nahan et al. the predetermined method comprises discounting a price for a certain good in new condition when the independent seller's good is the certain good in used condition.

Regarding claim 6, in the computer-implemented method of Nahan et al. the seller agrees, before the sale, to sell the good at a sale price determined by the marketer proximate a time of sale of the good to the buyer, the sale price being determined in accordance with the predetermined method corresponding to the seller-selected option.

Regarding claims 10 and 22, in the computer-implemented method of Nahan et al. the sale price is determined proximate to a time the buyer wishes to buy the good, proximate to a time of sale to a buyer.

Regarding claims 17 and 18, in the computer-implemented method of Nahan et al. the sale price is displayed to the buyer via a website.

Regarding claim 19, the computer-implemented method of Nahan et al. further comprises selling the good to the buyer at the derived sale price.

Response to Arguments

9. Applicant's arguments filed May 30, 2006 have been fully considered but they are not deemed persuasive.

10. Regarding the argument that the method of Nahan et al. does not involve "setting" a price because the information retrieved by Nahan et al. is "already determined, already fixed, price information," it is noted that, yes, Nahan et al. do retrieve previous price information, as does applicant's claimed invention, in fact, for the very same reason as applicant does, to assist the seller in "setting a price." See, for example, line 1 of page 11 of applicant's arguments, quoting from the Nahan et al. reference.

11. To the extent that applicant is arguing that the references applied in the rejection fail to use the same names for certain elements as the names used by applicant (e.g., setting/deriving/determining/calculating/etc.), the argument is irrelevant, as it is noted that the disclosure in a reference must show the claimed elements arranged in the same manner as in the claims, but ***need not be in the identical words*** as used in the claims in order to be anticipatory. See *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Additionally, note that, during patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow. See *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

12. Regarding the argument that Nahan et al. fail to disclose determining a sales price “proximate a time of sale of the good to a buyer,” the “sales price” comprising “a price at which the buyer may purchase the independent seller’s good,” Nahan et al. indeed disclose determining a sales price “proximate a time of sale of the good to a buyer,” the “sales price” comprising “a price at which the buyer may purchase the independent seller’s good.” See, for example, the portion of Nahan et al. quoted by applicant on pages 10 and 11 of applicant’s arguments.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to the disclosure.

14. Applicant’s amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(571) 272-6787**, and whose facsimile number is **(571) 273-6787**.

The examiner can normally be reached weekdays from 9:30 to 6:00.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Alexander Kalinowski, can be reached at **(571) 272-6771**.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (571) 273-8300**. Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

August 4, 2006



8/4/06

Gerald J. O'Connor
Primary Examiner
Group Art Unit 3627